

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF OHIO
4 EASTERN DIVISION

5 MARK FOUST, II,

6 Plaintiff,

7 vs.

8 CITY OF TWINSBURG, ET AL.,

9 Defendants.

Case No. 5:17CV2350

Akron, Ohio

Wednesday, February 14, 2018

3:10 p.m.

10 TRANSCRIPT OF CASE MANAGEMENT CONFERENCE
11 BEFORE THE HONORABLE JOHN R. ADAMS
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Plaintiff: Sara M. Gedeon
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19 For the Defendants: James M. Popson
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Wednesday, February 14, 2018

THE COURT: For the record, the Court has before it today Case Number 5:17CV2350. The case is Mark Foust, II versus the City of Twinsburg and other individually named officers, law enforcement officials from the defendant.

We're here today for a case management conference.

Counsel for the plaintiff, if you'd take a few moments -- I'll direct this to all counsel. You can remain seated. Use the microphones, if you would. The bright green light on the base of the microphone indicates it's working.

And we'll begin with the plaintiff's counsel. Take a few moments. I did read the pleadings. I'm generally aware of the nature of the claims. If you would, why don't you give me just an overview and then go from there.

MS. GEDEON: Thank you, Your Honor. Sara Gedeon
for the plaintiff.

THE COURT: You need to press -- is the bright green light on, on the base of the microphone?

MS. GEDEON: Oh, okay. I'm sorry.

Your Honor, this is Sara Gedeon for the plaintiff.

This lawsuit addresses the violation of Mr. Foust's Fourth and Fourteenth Amendment constitutional rights to be free of illegal search and seizure.

Mr. Foust was suspected initially of having possibly

1 participated in a drug deal. However, the officers involved
2 in this case went well beyond the scope of what was legal
3 when they detained him and went so far as to search his car
4 numerous times, have him become undressed on the street.
5 And then, although they voluntarily claim that he went to
6 the police department, they actually seized his I.D. and his
7 phone, I believe, so that he would go to the police station
8 where they further detained him.

9 THE COURT: Is there any video, any body cam, or
10 any video at the police station?

11 MS. GEDEON: Your Honor, we just found out today
12 that there might be. I have not seen it nor has defense
13 counsel that I'm aware of.

14 THE COURT: What do you mean by "might be"?

15 MR. POPSON: Because I haven't --

16 THE COURT: Why don't we do the same thing.
17 Press the base of the microphone.

18 MR. POPSON: Because I haven't seen it yet
19 myself, Your Honor, but I have information that we do have
20 it, that we do have some video in any event. But I have not
21 personally seen it yet.

22 THE COURT: You know, I want to be cautious, but
23 this case was filed in November, right?

24 So why is it that the police department didn't turn
25 over the video of this incident immediately to counsel so

1 that we could have a more meaningful discussion today?
2 Because the video literally is something important enough
3 that would shed a great deal of light on what occurred here
4 and whether the plaintiff's account of what transpired is
5 accurate, whether the defendant's account is accurate.

6 So is there some reason why you don't have the video
7 yet?

8 MR. POPSON: No, I don't have a reason.

9 THE COURT: Well, what about your representatives
10 there? Is there some reason why those of you from Twinsburg
11 haven't promptly turned over the video to your counsel?

12 Anyone care to address the Court?

13 MR. MAISTROS: David Maistros, Your Honor, law
14 director for the City of Twinsburg.

15 It is my understanding that the officers were wearing
16 body camera, those that were in uniform, so there are
17 videos. But quite frankly, we just haven't gotten it to
18 counsel where those have been turned over.

19 THE COURT: Tell you what we're going to do,
20 counsel. You're going to pay the plaintiff's attorney fees
21 and you're going to bring that video. You're going to turn
22 it over to your counsel, and we're going to get that video
23 here forthwith so that they can evaluate this case, so you
24 can evaluate this case, so we all know what goes on in this
25 case.

1 With all due respect, it's really not appropriate, at
2 least in my mind, to have the video, knowing you're facing a
3 federal lawsuit, knowing that you have officers who are
4 named, claims that are made, and you have some of
5 the -- perhaps the best piece of evidence available, and
6 here we are in February and you haven't turned it over to
7 your counsel and you haven't turned it over to the
8 plaintiff.

9 So we are going to set this over and continue it. And
10 then I'm going to order that forthwith, within -- how many
11 days is it going to take to have this produced?

12 Have you seen it?

13 MR. MAISTROS: I've seen some of them, Your
14 Honor, yes.

15 THE COURT: When did you see them?

16 MR. MAISTROS: I saw them when -- prior to the
17 filing of the lawsuit, Ms. Gedeon made a public records
18 request. And my understanding was she requested these.

19 THE COURT: Well, did she get them?

20 MS. GEDEON: I did. I never got them, though.

21 THE COURT: So there is another reason why. She
22 makes a public records request and she doesn't get them as
23 of yet?

24 Counsel, do you want to comment on that?

25 MR. POPSON: Well, it was my understanding

1 earlier today that they were sent. I did not know that she
2 didn't have them until today.

3 THE COURT: When were they sent?

4 MR. POPSON: I don't have the records here of the
5 public records request in front of me right now. I don't
6 know when -- we'd have to go and look.

7 But we thought -- it was my understanding that they
8 had been sent on a public records request.

9 THE COURT: I'm sorry. If I sound incredulous
10 and/or perturbed, I am, because we've wasted a lot of time
11 here today on a case that we could decipher a great deal
12 about how this case should proceed.

13 And with all due respect, if there is any fault to be
14 assessed, I know where the fault lies.

15 So, counsel, we'll set this matter over. I expect
16 everyone to be back here, and I expect that video to be back
17 here, meaning you'll provide the Court with a copy of the
18 disk with all of the video. You'll provide counsel for the
19 plaintiff a copy. It will be done within seven days. She
20 should have had it long before then if she made a public
21 records request.

22 So we'll look forward to seeing it on or before 4:00
23 next Wednesday.

24 If you don't have the video by that point in time, you
25 file a motion. You let us know.

1 MS. GEDEON: Okay, Your Honor.

2 THE COURT: You go back and check your records.
3 You make certain you didn't receive it.

4 If you filed that records request -- that was going to
5 be my next question, was, well, what did you get out of the
6 public record? Did you make a public records request? Did
7 you get all the reports? Did you get all the pertinent
8 information?

9 That's always enlightening in these cases.

10 MS. GEDEON: Your Honor, I do not have the public
11 records request in front of me. But just routinely we do
12 request all reports, all audio, all video, all 911 calls.
13 Usually our list is pretty extensive.

14 I will go back and make sure that I do not have the
15 videos. But I do not recall seeing any videos. I have a
16 very small stack of police reports that I received in
17 response to our public records request along with consulting
18 and speaking with my client. And that's where we formed the
19 basis of the complaint.

20 THE COURT: You'll go back and take a look and
21 see if you made the formal request. The rules require
22 initial disclosures in any event. And forget about the
23 rules. Just think about common sense. Common sense is you
24 produce the video so that we all can see and be well aware
25 of what transpired here and get a better understanding of

1 the events in question.

2 So pull your calendars. We'll set the matter over for
3 another date and time. We'll all come back together. By
4 that time we'll all have the video. We'll all look at it
5 and decide exactly what we're going to do with this case and
6 how it's going to proceed.

7 Pull your calendars.

8 Jonathan, ten days from today or thereabouts.

9 We need to do this before March.

10 (Pause.)

11 THE COURT: 10:00 a.m. on February 27.

12 MS. GEDEON: I'll make it work, Your Honor.

13 THE COURT: Counsel?

14 MR. POPSON: As soon as it boots up. I shut it
15 off, Your Honor.

16 THE COURT: That's fine. Wait until it boots up.

17 MR. POPSON: February 27 I'm available, Your
18 Honor.

19 THE COURT: 10:00 a.m. I'll expect everyone to
20 be present, officers involved, individuals with full
21 settlement authority.

22 Have you made a demand in the case --

23 MS. GEDEON: Yes, Your Honor.

24 THE COURT: -- pursuant to the Court's order?
25 What's been the demand?

1 MS. GEDEON: I'm sorry?

2 THE COURT: What's been your demand? I'm sorry.
3 Go ahead.

4 MS. GEDEON: We submitted a demand to defense
5 counsel on January 17 in the amount of \$85,000.

6 THE COURT: And based on? Just your evaluation
7 of the case? Or how do you come up with that number?

8 MS. GEDEON: Yes, Your Honor. Several different
9 things play into it.

10 THE COURT: Does that include your attorney fees
11 and other issues?

12 MS. GEDEON: We have -- yes. And Your Honor, I
13 have not -- I did not know if I was supposed to file the
14 preliminary estimate, but I've shared it with my client and
15 defense counsel. And that did play a part into it where we
16 figured -- we figured out that that would probably be
17 somewhere around the cost to try this case, too.

18 THE COURT: \$85,000 in attorney fees?

19 MS. GEDEON: And expenses.

20 THE COURT: That's probably low.

21 Counsel, what's been the offer?

22 MR. POPSON: The offer is \$5,000 right now.

23 THE COURT: All right. Well, we'll have the
24 video. And hopefully both sides will have a better idea of
25 the strengths and weaknesses of the case. And then if you

1 wish to negotiate further, you're free to do that.

2 So we'll see you on the 27th. There has been full
3 initial disclosures. I will expect both sides, counsel, any
4 information that you have under the rule, initial
5 disclosures, you make them.

6 MS. GEDEON: We have, Your Honor.

7 THE COURT: You have?

8 MS. GEDEON: Yes.

9 THE COURT: Make sure you have.

10 Counsel for the defendants, all reports, public
11 records, all of that will be produced by next Wednesday to
12 counsel for the plaintiff.

13 Initial disclosures make those kind of requirements.
14 Have them present.

15 We will look forward to seeing the video. Both sides
16 take a look at them. Determine what kind of effect that has
17 on the case. I'll look at all the videos as well so that I
18 can be fully prepared.

19 That's how we will proceed.

20 Thank you very much.

21 MS. GEDEON: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 (Proceedings concluded at 3:30 p.m.)

24

25

C E R T I F I C A T E

I certify that the forgoing is a correct transcript from the record of proceedings in the above-entitled matter.

S/Caroline Mahnke

2/15/2018

Caroline Mahnke, RMR, CRR

Date